

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: RON LUDWIG, Complainant, vs. LEAST COST ROUTING, INC., Respondent.	DOCKET NO. FCU-00-5 (C-00-148)
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**ORDER INITIATING FORMAL COMPLAINT PROCEEDING
AND
ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued August 31, 2000)

On April 10, 2000, Ron Ludwig (Complainant) filed an informal complaint with the Utilities Board (Board) regarding his long distance telephone service, pursuant to Iowa Code § 476.103 (1999 Supp.). Complainant alleged the long distance service at his home and his business, Horizons Unlimited of Palo Alto County, Iowa, had been slammed by Least Cost Routing, Inc. (Least Cost Routing), in November of 1999. Complainant alleged that Least Cost Routing's representative claimed to be selling a billing service for Sprint (Complainant's preferred interexchange carrier) and it was not until February of 2000 that Complainant realized his long distance rates were substantially higher than promised.

Board staff identified the complaint as C-00-148 and, on April 13, 2000, forwarded a copy of the complaint to Least Cost Routing for a response, pursuant to 199 IAC 6.3(1).

On May 1, 2000, Least Cost Routing responded by providing Board staff with a recording of a telephone conversation which Least Cost Routing alleged to have occurred on September 23, 1999, between Complainant and a third-party verifier. Least Cost Routing alleged the recording verified Complainant's request for a change in his long distance service. Least Cost Routing further alleged that Complainant's account was cancelled on December 27, 1999.

On May 2, 2000, Board staff contacted Complainant by telephone and played the recording for him. Mr. Ludwig agreed that it was his voice on the tape; however, he alleged that the entire sales conversation was not on the tape and that during the unrecorded part of the call the caller misled him into believing the caller represented Sprint, Complainant's preferred interexchange carrier (PIC). That same day, Board staff issued a proposed resolution stating that the information on the recording appeared to authorize switching Complainant's home and business telephones to Least Cost Routing and proposing that the file would be closed without further action in 14 days unless Complainant provided additional information or requested a formal complaint proceeding.

On May 8, 2000, Complainant responded to the proposed resolution, alleging that the tape recording was incomplete, that he would never have given permission to switch long distance carriers if he had understood that to be the effect of his agreement, and that he believed he was giving permission only for a change in the

billing process used by his preferred carrier, as explained by the sales representative. Complainant asked for reconsideration of his complaint.

On May 19, 2000, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a letter in support of Complainant's request for reconsideration, noting Complainant's contentions that he was misled regarding the identity of the carrier and the service being marketed. Consumer Advocate states that the taped verification does not refute Complainant's contentions and the response letter provided by Least Cost Routing is equally silent on these points. At a minimum, Consumer Advocate believes Least Cost Routing should be required to address Complainant's allegations concerning the unrecorded content of the marketing call and all of the requirements of 47 C.F.R. § 64.1150(d), the federal regulation that specifies the requirements for an independent third-party verification.

On May 25, 2000, Board staff forwarded Consumer Advocate's letter to Least Cost Routing and requested a written response be filed on or before June 6, 2000.

On June 8, 2000, Least Cost Routing filed its response, stating that nothing raised by Complainant or Consumer Advocate warranted reconsideration of the proposed resolution. Least Cost Routing stated that its employees are required to engage in fair and honest sales practices and that its management randomly monitors its sales calls to ensure compliance with this policy. Least Cost Routing also notes that the recorded verification establishes that Complainant was informed that his long distance service would be switched, that there would be a switching fee, and that there would be a minimum billing requirement. Least Cost Routing further states that it utilizes the services of The Verification Company, Inc., for third-party

verification of PIC change requests, an independent third party which is not owned, managed, controlled, or directed by Least Cost Routing or its parent company, Primus Telecommunications Group, Incorporated; that the verifier has no financial incentive to confirm PIC change orders; and that the verifier operates in Duniden, Florida, in a location physically separate from Least Cost Routing's Clearwater, Florida, facility. Least Cost Routing asserts that The Verification Company is a qualified independent third party, as required by 47 C.F.R. §64.1150(d). Finally, as a gesture of good faith, Least Cost Routing indicates its willingness to re-rate Complainant's calls "to the rate of his preferred carrier, upon receipt of documentation that will permit the necessary calculations."

On June 12, 2000, Complainant responded to Least Cost Routing's letter, alleging that the audio tape had been doctored to eliminate Complainant's questions asking whether the sales representative was an employee of Sprint and the representative's affirmative response. Complainant also disputes Least Cost Routing's claim that an independent third-party verifier took part in the call.

When the Board receives a written complaint asking the Board to determine the reasonableness of a public utility's actions pursuant to any part of Iowa Code ch. 476, the Board normally processes the matter as an informal complaint proceeding, as was done in this case. If the Board determines the public utility's response is inadequate and there is any reasonable ground for investigating the complaint, the Board is required to initiate a formal proceeding. Iowa Code § 476.3(1).

In reviewing this file, the Board finds that Least Cost Routing's response is inadequate and there is reasonable ground for further investigation of this complaint. The Board finds Least Cost Routing's response to be inadequate in several respects. Least Cost Routing has provided a recording of an alleged independent third-party verification, but the recording appears to be incomplete. For example, the alleged verifier never identifies himself or the company he represents, information that might reasonably be expected from a truly independent third-party verifier. There is no indication that the customer was transferred from a Least Cost Routing representative to a third-party verifier. Further, the alleged verifier requests information from Complainant that appears to be sales-related and inappropriate in a verification call, such as the average amount of Complainant's long distance bills. The alleged verifier appears to have access to relatively detailed information regarding Complainant, including his telephone numbers and addresses at six different locations, information that must have been requested and received from Complainant during an earlier, unrecorded part of the telephone call. Least Cost Routing offers no explanation as to why an independent third-party verifier would not record the entire verification conversation. These are only examples of the issues raised by the alleged taped verification, but they are sufficient to support a finding that Least Cost Routing's response is inadequate and that there are reasonable grounds for further investigation of this complaint. Accordingly, the Board will docket the matter as a formal complaint proceeding, identified as Docket No. FCU-00-5, and assign the matter to an administrative law judge for further proceedings to investigate

the allegations of the complaint and the response of Least Cost Routing, including a hearing if necessary.

IT IS THEREFORE ORDERED:

1. The complaint filed by Ron Ludwig of Horizons Unlimited of Palo Alto County, Iowa, on April 10, 2000, and identified as C-00-148 is docketed as a formal complaint proceeding, identified as Docket No. FCU-00-5, pursuant to Iowa Code §§ 476.3(1), 476.103 and 199 IAC 6.5.

2. Pursuant to 199 IAC 6.7, the complaint and all supplemental filings in C-00-148 are made a part of the record of this formal complaint proceeding.

3. Pursuant to Iowa Code § 17A.11(1), this matter is assigned to the Board's administrative law judge for such further proceedings as the administrative law judge may find appropriate to resolve the issues in this case, including the validity of Least Cost Routing's alleged verification and such other issues as may come to light as the matter progresses.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr. /s/ Diane Munns
Executive Secretary

Dated at Des Moines, Iowa, this 31st day of August, 2000.